

Kentucky Environmental Quality Commission Public Meeting

Public Participation in Environmental Decision-making

Meeting Minutes

August 18, 2004

Capitol Annex Room 113

Frankfort, Kentucky

EQC Commissioners Present

Lindell Ormsbee, Chair

Gary Revlett

Betsy Bennett, Vice Chair

Patty Wallace

Laura Knoth

Eugene Zick

Speakers/Representatives Present

Art Williams, Director, Louisville Metro Air Pollution

Lloyd Cress, Commissioner, DEP

Susan Bush, Commissioner, Natural Resources

Tom FitzGerald, Director of KY Resource

Ralph Schiefferle, Division of Water

John Lyons, Division of Air

Commissioners not attending

Gordon Garner

EQC Staff Present

Leslie Cole, Exe. Director

Erik Siegel, Assistant Director

Frances Kirchhoff, Executive Secretary

Audience Attendance

Approximately 35 people

Opening Remarks

Lindell Ormsbee, Chair of the Environmental Quality Commission, opened the meeting at 1 p.m. He announced that EQC will be reviewing opportunities to strengthen public participation in state environmental decision-making as part of a series of EQC meetings to focus on ways to improve state environmental decision-making in Kentucky.

Chair Ormsbee first took a few minutes to welcome two new EQC Commission members: Mr. Eugene Zick and Ms. Laura Knoth. The commission next took action on meeting minutes.

Commissioner Betsy Bennett made a motion to approve the March 5, 2004 minutes, seconded by Gary Revlett and passed unanimously by voice vote. Commissioner Gary Revlett made a motion to approve the May 17, 2004 minutes, seconded by Betsy Bennett, passing by unanimous voice vote.

Public Participation in Environmental Decision-making

Mr. Ormsbee said that the purpose of the meeting was to explore opportunities to strengthen public participation and involvement in state decision-making. Mr. Ormsbee said public participation has become a standard component of environmental decision-making processes in Kentucky. Frequently used methods of public involvement, such as public comments and hearings, however, are often reactive in nature, involve insufficient deliberation and engage only a small number of participants. Today's EQC meeting will explore opportunities to provide people with a more direct and meaningful voice in environmental issues that affect them.

Mr. Ormsbee introduced the first speaker, Art Williams, Director of the Louisville Metro Air Pollution Control District. Mr. Williams will share with us some of his experiences at the district and how the agency has worked to better involve the public in decisions.

Art Williams, Director, Louisville Metro Air Pollution Control District (APCD)

Mr. Williams noted that the air pollution control district had been around about 50 years. He noted that a 7-member board, which has monthly meetings and provides for public comment, governs the district. He also noted that the district has promoted the use of stakeholder groups to promote public dialog. For example the district put together a SIP workgroup two years ago to evaluate strategies to meet ozone attainment. He noted that the district also has a robust bilingual web site that gets much use.

Mr. Williams also reviewed the Louisville Metro Air Pollution Control District's community outreach and education program serving a five county region known as Kentuckiana Air Education (KAIRE). KAIRE seeks to enhance public health, strengthen neighborhoods and quality of life by promoting environmental and economic health for residents.

Mr. Williams next reviewed how the district worked through a very complex air toxics issue with the help of citizen involvement. He noted that in 1995 the district received a federal grant to create the West Jefferson County Community Task Force in response to concerns about air pollution issues in the heavy industrialized area. The district pulled together \$2 million and has also received \$150,000 per year from the state to operate 12 air toxics monitors in the area. Since this initiative began the task force has held some 96 meetings. He said the task force had the right mix of stakeholders and their interest in the issue has supported their long-term involvement. All the meetings are open to the public. He noted that the effort included risk assessments and a scientific approach to identify issues and needs.

In response to the task force and air monitoring Mayor Jerry Abramson and the District began to develop an air toxics program.

- In December 2003 Mayor Jerry Abramson named 21 members to a new Air Quality Task Force to develop a long-term strategy to improve the community's air quality. Membership is composed of a broad cross-section of persons with background in health, business, industry, neighborhood involvement, environmental advocacy, government officials and regional representatives. The Task force worked with local and state officials and made recommendations to APCD Board on a State Implementation Plan, outlining how the community will meet more stringent federal air-quality standards.
- In August 2004 EPA Region IV and APCD staff conducted three public workshops in Louisville on air quality, permitting, emergency response and environmental justice.
- September 2004 – Mayor Jerry Abramson and APCD held a press conference to announce release of Toxic Air contaminant regulations for public review and comment. APCD conducted a number of forums for stakeholders and public throughout the comment period.

Mr. Williams also discussed a computerized local air index reporting (CLAIRE) software and hardware will enable the public to view hourly data for Louisville Metro region. APCD will make real-time data from regional monitoring stations available to the public on www.apcd.org.

Question and Answer

Q. How were the 22 members selected to be on the task force?

A. Members are selected by a screening process for diversity and by geography.

Q. What about training workshops?

A. The district holds workshops on permitting and other pertinent topics.

Lloyd Cress, Commissioner of the Department of Environmental Protection and Susan Bush, Commissioner for the Department of Natural Resources

Chair Ormsbee next introduced Commissioner Lloyd Cress of the Kentucky Department of Environmental Protection and Commissioner Susan Bush of the Kentucky Department of Natural Resources to share their views on the role of public participation in state decision-making.

Susan Bush first gave her perspective of environmental protection. She noted that prior to the first half of the 19th century little thought was given to environmental consequences. At that time our resources were being exploited and there was essentially no protection, let alone public participation. It was not until the 1970s that national legislation focused on protecting our environmental resources. Ms. Bush noted that most public participation processes are part of the federal and state environmental permitting programs. Using the surface mining permitting process as an example, Ms. Bush named four opportunities one could comment on a permit. The permit process includes a 30 day public comment period opportunity to request public hearings. However, she conceded that this process is reactive in nature focusing on hearings and court rulings.

Ms. Bush noted that the regulatory environment has now changed from command and control to one of cooperation and collaboration to achieve sustainability of our natural resources. She indicated that recent national surveys have revealed that 80 percent of us view ourselves as environmentalists. She noted that citizens want to see environmental outcomes and results not necessarily more regulations. Ms. Bush indicated that she wants to move from confrontation to cooperation to recognize change and promote balance with economic growth.

The Kentucky Department of Natural Resources has been working to improve outreach and participation opportunities for the public and regulated community specifically by:

- Publishing the Cabinet's regulatory agenda.
- Create consistent and readable documents the public can understand.
- Participate and hold forums that solicit input from stakeholders.
- Obtain feedback on the effectiveness on our current programs.
- Work to develop a negotiated rule-making process.
- Utilize technology currently available to disseminate information.
- Develop partnerships with agencies, universities, etc. to obtain data and do necessary research.

Ms. Bush noted that finding new ways to effectively engage the public in decision-making process is going to be evolutionary. We must be willing to dedicate the time and effort to improve the process over the long term. She said citizens must also be willing to make an investment of time and effort toward decision-making.

Mr. Cress next discussed public participation issues and needs. He noted that this was a timely topic and he was very concerned about how to strengthen public input and participation. He said when he undertook his duties as Commissioner of DEP there was a "bunker mentality" with agency decisions not being made with a great deal of public input. While the decisions made may have been sound, doubt was cast on the reasons or necessity of the action or its appropriateness. Mr. Cress said he has set out to change that mentality by first looking at where we got to where we are.

Mr. Cress reviewed the history of the cabinet and the fact that it was governed in the late 1960s by commissions, who were not advisory but decisive. All the meetings took place in a public forum. In 1973 a single agency head was created and EQC was created as a substitute for the commission to provide for public debate and discussion.

Over time, Mr. Cress noted that this organizational structure served us well and the cabinet actively participated in EQC meetings. During the past 5 years the Cabinet has not welcomed EQC and the public has lost this involvement to our detriment. Mr. Cress indicated that he would like to reverse that trend and that EQC once again be the body to promote informative and lively discussion.

Mr. Cress next reviewed the notice of intent process, which was adopted by the legislature to promote preliminary input in the regulatory process. However, Mr. Cress noted that this requirement only served to lengthen the regulatory process to 9 months and this requirement was repealed by the legislature. Mr. Cress then outlined several areas that his agency will be working on to strengthen public participation and make the policy process more open and transparent.

- Use negotiated rulemaking or work group approach to allow the agency to obtain information and input so it is better informed.
- Create an outreach program in which DEP personnel actively seek opportunities to meet with organizations and interest groups to talk about the issues and programs of the agency.
- Publish on website a regulatory agenda so the status of rule-making actions, where they are in the process and when they are anticipated to be concluded.
- To make information available of the impact of anticipated actions.
- To focus on and improve the agency's capability of risk assessments.
- To look more fully at the economic impact of a decision by doing an economic evaluation with a focus on basic economic research.

Mr. Cress noted that the Department for Environmental Protection welcomes the opportunity to participate with EQC in a working public forum. He also noted that new structures within the Cabinet have created a role of Director of Regulatory Affairs. Scott Smith is Director and he will be one of the regular attendees and will participate in the EQC meetings to discuss regulatory activities of the agency to make the public aware.

Mr. Cress also indicated that the cabinet will host a new and improve conference on the environment on Oct. 26-27. It will be informative but also include differing views of an issue along with information on innovative environmental technology.

Tom FitzGerald, Director of the Kentucky Resource Council

The next speaker was Tom FitzGerald, Director of the Kentucky Resource Council to provide a citizen's perspective on strengthening public participation in state environmental decision-making.

Mr. FitzGerald said he shared Mr. Cress's beliefs that the public provides an essential role in policy and regulatory decision-making. He noted that federal programs have largely driven environmental policy in Kentucky during the past 34 years. He noted that the notion that the quality of the environment is in conflict with economic development is a myth.

Mr. FitzGerald spoke about the history of the permitting process and how it has moved forward. For example he noted that when the state held a public meeting on M and T Chemical all the state could do was to stand up there and let people speak. There was no interaction with the audience.

While the process has improved since then there is still a lot to be done. He noted that the mentality still exists that does not provide for public input and participation in siting decision. He gave an exception to that with Scott Paper. The company provided for community forums about its plant and the process it would use to recycle paper. The public and the environmental community while not endorsing the plant did not litigate largely based on the company's approach to involving the public early on. This provided public access and community respect for the company.

Mr. FitzGerald said that unfortunately that this is not usually the case and that Kentucky is a largely reactive state with little opportunity for public involvement with the exception of EQC. He noted that there is a need for the cabinet to take a look at its process and outcomes. He noted that the state Brownfields Task Force was a good example that had a tremendous outcome.

Mr. FitzGerald offered several suggestion including:

- Put all permits up for comment on the website
- Make public notices for air quality permits including Title 5, which are locally significant.
- Include public notice, comment and participation in water withdrawal permits.
- Review other permit programs for public input. For example Clean Water Act 401 authorization has no public participation.
- In the area of waste permits, require public meeting before the permit has been essentially finalized, which is now the case.
- All second and tiered permits should have expanded public participation.
- Expanded comment period is needed for some notices including the draft list of impaired waterways.
- Require all mining permit notices be posted on the web site. There is no excuse why a notice cannot be scanned and put on the web site.

Mr. FitzGerald said the area most lacking in public participation is enforcement. He said surface mining was a better model, which allows the public a right to inspect and accompany the inspector. He noted that about 90 percent of the enforcement cases, however, are adjusted informally and the public has no role in these decisions. The LWD in Paducah for example was ordered to close but then the state reversed its decision. Mr. FitzGerald said he found out about this through a newspaper article. The enforcement process should also be open and transparent, commented Mr. FitzGerald

Mr. FitzGerald noted that the state has made an effort to conduct seminars for permitting programs in the past, such as Title 5 Air permits. He said there was an ongoing need for these programs and also a need to help the public better understand the permitting process and their role in it. He said the bunker mentality of the cabinet not only has an affect on the industry; it has impacted the public since oftentimes the public is not apprised on what is going on and what is available.

Mr. FitzGerald said the public participation process now tends to occur after the public feels threatened by a project or plant. He said that the first interaction occurs after a permit has been drafted and only serves the state in its regulatory process with little thought of public input. He suggested the following:

- Adopt an office of Advocacy to demystify the permit process
- Daylight all economic investment decisions in the state
- Provide for public participation in economic development decisions that use state financial incentives.

Mr. Ormsbee thanked the speakers for their comments.

EQC Regulatory Review

The commission next reviewed proposed regulations.

Drinking Water

Mr. Ralph Schiefferle, with the Kentucky Division of Water gave a brief overview of 8 proposed drinking water amendments:

- 401 KAR 8:010. Definitions for 401 KAR Chapter 8
- 401 KAR 8:020. Public and semipublic water supplies-general provisions
- 401 KAR 8:070. Public Notification
- 401 KAR 8:075. Consumer confidence reports
- 401 KAR 8:150. Disinfection, filtration, and recycling
- 401 KAR 8:300. Lead and copper
- 401 KAR 8:441. Repeal of 401 KAR 8:440
- 401 KAR 8:700. Bottled water

Mr. Scheifferle noted that the division had received a lot of comments on the amendments. Commissioner Betsy Bennett made a motion to approve the regulations. Eugene Zick seconded the motion. The motion passed unanimously.

Air Quality

John Lyons, Director of the Division of Air Quality concerning air regulations

- 401 KAR 75:002. 40 C.F.R. Part 61 national emission standards for hazardous air pollutants
- 401 KAR 58:025. Asbestos standards
- 401 KAR 60:005. 40 C.F.R. Part 60 standards of performance for new stationary sources.
- 401 KAR 60:670. Standards of performance for nonmetallic mineral processing plants.
- 401 KAR 63:002. 40 C.F.R Part 63 national emission standards for hazardous air pollutants.
- 401 KAR 63:106. Repeal of 401 KAR 63:105

These essentially incorporate federal language by reference. A motion was made by Commissioner Gary Revlett to approve the regulations. Commissioner Eugene Zick seconded the motion and the motion was unanimously approved.

Mr. Lyons also briefed the Commission on regulation 401 KAR 59:185 concerning new solvent metal cleaning equipment. The Cabinet is proposing to amend this regulation to reduce VOC emissions from cold cleaning degreasing operations in Boone, Campbell, and Kenton counties in Northern Kentucky as an alternative to the Vehicle Emission Testing program. The regulation would impact a number of small businesses. The division was directed by the legislature to look at alternative reductions to replace the VET program.

A motion was made Gary Revlett and seconded by Betsy Bennett to table EQC action on the 401 KAR 59:185 amendments at this time until after the public hearing. The motion passed unanimously.

Other EQC Business

Mercury Recommendations

Leslie Cole, Executive Director of EQC, distributed a set of mercury recommendations that were drafted based on the May 17, 2004 EQC Public Meeting. After discussion a motion was made by Commissioner Betsy Bennett to approve the recommendations and seconded by Commissioner Eugene Zick. Ms. Bennett also requested that the recommendations be sent to the Governor and the Secretaries' of Environmental and Public Protection and the Families and Health. The

recommendation passed unanimously. A copy of the recommendations are attached and made a part of these minutes.

EQC Aug. 6 Meeting with Secretary Wilcher

Chair Ormsbee provide a briefing on his meeting with Secretary Wilcher on August 6. The two issues that were mentioned by the Secretary were her desire to be more engaged with the Commission. She welcomed the opportunity to be more involved in what EQC is doing. The Secretary made a commitment to be at the planning meeting November 18. We discussed ways to open communication with the Cabinet and the Commission. The EQC budget was discussed. Cabinet is looking at the budget. Mr. Ormsbee got the impression from the Secretary that all things possible will be done to keep EQC fully funded.

Martin County Coal Slurry Spill. EQC facilitated a teleconference call on July 8 between the U.S. EPA the Kentucky Division of Water and the public to discuss the status of the cleanup of the Martin County coal slurry spill. A summary of the teleconference was provided to participants and EPA and is available at the web site. EQC Director Cole noted that several issues were noted by the public during the call including:

- Little to no public input or involvement in the process.
- Public concerns about drinking water.
- Lack of information sharing.
- Lack of community trust.

Ms. Cole noted that the citizens indicated a strong interest to have the resources to hire a consultant to better explain the technical information and provide a better understanding on the cleanup effort. The citizens also wish to conduct their own water testing. Ms. Cole noted that she is exploring funding possibilities for the citizens including the use of a trust fund that has been set up by the state as part of their agreed order with Martin County Coal.

EQC Conflict of Interest Standard. Ms. Cole reminded commissioners to please submit the conflict of interest standard as soon as possible.

Governor's Conference on the Environment. The conference is October 26 in Lexington. Ms. Cole informed commissioners that EQC would pay registration for those interested in attending.

EQC Sept. 9 Public Meeting. Ms. Cole informed the commissioners that the next EQC meeting will be held Sept. 9 and focus on forestry. The forum will be held at Natural Bridge State Resort Park and will be a by invitation roundtable discussion on the status of our forest resources.

With no further business, the meeting adjourned at 4:05 p.m.



Signed Lindell Ormsbee, Chair

11/16/04

Date